

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

HS 45 JOHN LLC,

Chapter 11

Case No.: 15-10368 (SHL)

Debtor.

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CHUN PETER DONG, INDIVIDUALLY AND
DERIVATIVELY ON BEHALF OF 45 JOHN
LOFTS, LLC

Adv. Pro. No.

Plaintiffs,

15-01088 (SHL)

-against-

CHAIM MILLER A/K/A HARRY MILLER,
SAM SPREI, HS 45 JOHN LLC, QUICK TITLE
SEARCH LLC, AND ABRAHAM
TEITELBAUM

Defendants.

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ORDER EXTENDING TEMPORARY RESTRAINING ORDER

The above captioned action having been initially commenced on or about February 25, 2015 in the Supreme Court of the State of New York, County of New York, entitled: Chun Peter Dong, individually and derivatively on behalf of 45 John Lofts LLC, (collectively the “Plaintiffs”) v. Chaim Miller a/k/a Harry Miller, Sam Sprei, HS 45 John LLC, Quick Title Search LLC and Abraham Teitelbaum, (collectively the “Defendants”) Index No. 650502/2015 (the “**State Court Action**”) before the Honorable Shirley Werner Kornreich, J.S.C, and

WHEREAS Judge Kornreich entered an Order to Show Cause dated February 25, 2015 (the “**TRO**”) enjoining and restraining: (a) Defendants Miller and Sprei from taking any affirmative action, performing any act, and executing any deed or agreement, as a Manager of, or

otherwise on behalf of, 45 John Lofts LLC, without the prior written consent of Plaintiff Chun Peter Dong; (b) Defendants Miller and Sprei from executing any deed, agreement or other document in connection with or in furtherance of a certain “Agreement of Purchase and Sale” dated on or about September 17, 2014 between Plaintiff 45 John Lofts LLC and the Debtor (the “Agreement”); and (c) Defendants Quick Title Search LLC and Teitelbaum from disbursing, releasing or encumbering all or any portion of the sum of \$12,453,980 (and all interest accrued or accruing thereon) in the possession and/or under the control of such Defendants (the “Funds”); and

WHEREAS the State Court Action was removed by the Debtor , by a Notice of Removal To The United States District Court filed on March 6, 2015 (Bkrcy Docket #13) from the Supreme Court of the State of New York, County of New York, to the United States District Court for the Southern District of New York (Buchwald, U.S.D.J), and thereafter referred to this Court pursuant to 28 U.S.C. §§ 1334, 1446, 1452, Rule 9027 of the Rules of Bankruptcy Procedure, and the Amended Standing Order of Reference of the Honorable Loretta A. Preska, Chief Judge of the United States District Court, dated January 31, 2012; and

WHEREAS Silverman Shin Byrne & Gilchrest PLLC, attorneys for the Plaintiffs, requested a conference before this Court with respect to the continuation of the TRO (Bkrcy Docket #14) in order to maintain the *status quo* pending a further hearing; and

WHEREAS the TRO was set to expire on March 20, 2015, 14 days after removal of the State Court Action; and

WHEREAS the Court held an “on the record” telephonic conference on March 19, 2015 (the “Conference”), where due and sufficient notice of the Conference was given, and counsel for the Plaintiffs, the Debtor, Sam Sprei, Quick Title Search LLC and Abraham Teitlebaum

appeared thereon but no counsel appeared on behalf of Chaim Miller, also referred to as Harry Miller; and

WHEREAS the Court heard argument at the Conference from counsel regarding the possible continuance of the TRO, with the only objection being from counsel for Quick Title Search LLC and Abraham Teitlebaum that these parties no longer wished to be subject to a Court order and that these parties represented that they do not, in fact, hold any of the funds at issue; it is hereby

ORDERED, that, upon the record before the Court on removal, including the Affidavit of Chun Peter Dong in Support of Motion for Preliminary Injunction and Temporary Restraining Order, dated Feb. 18, 2015 [ECF No. 13, Part 6], the Court finds that Plaintiffs have satisfied the requirements for a temporary restraining order, which are (1) probable success on the merits and irreparable injury or (2) sufficiently serious questions as to the merits which constitute fair grounds for litigation and the balance of the hardships tips decidedly to the party requesting relief. *Vantico Holdings S.A. v. Apollo Mgmt.*, 247 F. Supp. 2d 437, 451 (S.D.N.Y. 2003) (citing *AIM Int'l Trading, LLC v. Valcucine SpA.*, 188 F. Supp. 2d 384, 387 (S.D.N.Y. 2002) (quoting *Jackson Dairy, Inc. v. H.P. Hood & Sons, Inc.*, 596 F.2d 70, 72 (2d Cir. 1979)); *Triebwasser and Katz v. AT&T*, 535 F.2d 1356, 1358 (2d Cir. 1976); *Consolidated Gold Fields PLC v. Minorco, S.A.*, 871 F.2d 252, 256 (2d Cir. 1989); and it is

ORDERED, that the Court overrules the objection of Quick Title Search LLC and Abraham Teitelbaum to extending the TRO because the funds in question are not funds owned by these parties and thus there is little harm to any injunction restraining their use and there is no harm if, in fact, these two parties do not hold such funds, but there could be great harm to Plaintiffs if the funds are moved; and it is

ORDERED, that the TRO be and is hereby extended through and including April 2, 2015; and it is further

ORDERED, that (a) Defendants Miller and Sprei are enjoined and restrained from taking any affirmative action, performing any act, and executing any deed or agreement, as a Manager of, or otherwise on behalf of, 45 John Lofts LLC, without the prior written consent of Plaintiff Chun Peter Dong; (b) Defendants Miller and Sprei are enjoined and restrained from executing any deed, agreement or other document in connection with or in furtherance of the Agreement; and (c) Defendants Quick Title Search LLC and Teitelbaum are enjoined and restrained from disbursing, releasing or encumbering all or any portion of the Funds, including interest accrued or accruing thereon; and it is further

ORDERED, that the Court will schedule another hearing during the pre-trial conference on March 24, 2015 with respect to the TRO and Plaintiffs' motion for a preliminary injunction, at which time the Court will discuss scheduling of any hearing on Plaintiffs' request for a preliminary injunction; and it is further

ORDERED, that nothing in this Interim Order shall prejudice any party's rights with respect to any matter not specifically addressed in this Interim Order; and it is further

ORDERED, that Plaintiff's counsel shall serve a copy of this order by overnight mail, and email where possible, to all counsel who participated in the Conference as well as to Robert A. Abrams, Katsky Korins LLP, 605 Third Avenue, New York, New York 10158-0038, an attorney who had telephoned chambers directly to inquire about the status of this matter.

Dated: New York, New York
March 20, 2015

/s/ Sean H. Lane
UNITED STATES BANKRUPTCY JUDGE